IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, CRIMINAL JURISDICTION

CRIMINAL APPEAL NO.200 OF 1990

Sampat Shriram Kanase ... Appellant
(Orig.Accused)

V/s.

The State of Maharashtra ... Respondent
(Orig.Complainant)

Shri K.Y.Mandlik for Appellant

Shri (Dr) F.R.Shaikh,APP for State

WITH

CRIMINAL APPEAL NO. 352 of 1990

The State of Maharashtra ...Appellant
(Orig.Complainant)

V/s

Sampat Shriram Kanse ..Respondent
(Orig. Accused)

Shri (Dr.)F.R.Shaikh,APP for State

Shri K.Y. Mandlik for Respondent

WITH

CRIMINAL REVISION APPLICATION NO.275/90

Sou.Kusum Ramchadnra Veer ..Petitioner
(Orig.Complainant)

V/s

1. Sampat Shivrma Kanse
2. State of Maharashtra ... Respondent
(No.1 Orig. accused)

Shri C.S.Joshi for Petitioner
Shri (Dr) F.R.Shaikh,APP for Respondent no.2
Shri K.Y.Mandlik for Respondent no.1

CORAM:D.G.DESHPANDE, &
S.R.SATHE,JJ.
DATED:20th Feb. 2007

ORAL JUDGMENT :- (Per S.R.SATHE,J.)

1. The appellant-original accused in Sessions Case No.179/1989 has preferred this appeal against the judgment and order passed by the Court of 4th Additional Sessions Judge, Thane whereby he was convicted for the offence punishable under Section

498A of IPC and sentenced to suffer r/i for 3 months and to pay fine of Rs.700/- in default to suffer r/i for 2 months.

2. As the above mentioned accused was acquitted of the offences punishable under Section 304B and 306 of IPC the original complainant has filed the Criminal Revision Application No.275 of 1990 and the State of Maharashtra has filed Criminal Appeal No.352 of 1990.

3. The brief facts giving rise to these proceedings are as under :

. The marriage of deceased Alka and accused took place on 9-5-1984 on Koregaon, District Satara. At that time the accused was residing at Nagthane, District Satara. He had passed his M.Sc. examination while the deceased Alka was also double graduate and serving in Census office, Mulund. As she was serving there even after marriage she continued to stay with her parents for further period of about 2 years at Byculla. However, at week-end accused and deceased used to meet each other either at Nagthane or Byculla. The first two years of marriage passed smoothly. On 23-10-1985 Alka gave birth to a female child who was thereafter named as Snehal. According to the prosecution. as

Alka gave birth to a female child the accused was unhappy and differences between them started since then.

4. In June 1986 the accused took admission for B.Ed at R.M.Bhatia College, Parel and hence accused and deceased started residing in the rented premises near the house of deceased father. Whenever deceased used to return late from the office the accused used to scold her and used to allege that she was having affair with her Supervisor. He used to take account of each and every paisa and often used to pick up quarrels with deceased on flimsy grounds. Not only that but it is alleged that he even used to assault her.

5. The father of deceased Alka had secured some rented accommodation in Sundram building at Padwal Nagar, Thane.It was taken in the name of his son. As the brother of deceased was having service at Nagpur the accused and deceased started residing in the said rented room. During that period Alka delivered a male child in August 1987. The accused started insisting Alka that her father should transfer the said accommodation in his name and on that count he even used to give threat that if this is not done she will have to face the consequences. It is alleged that Alka had expressed her sufferings

and ill-treatment meted to her to her colleagues working in the office as well as to her parents.

6. On 20-8-1988 at about 11-30 a.m. Alka poured kerosene on herself and set herself on fire. At that time her husband was in the house. The neighbours gathered there. Accused asked PW 9 Sudhakar Landge to call rickshaw and then they took Alka initially to Civil Hospital, Thane and thereafter she was shifted to Sion Hospital. The message was sent to the parents of Alka. They also reached to the hospital and made enquiry with Alka and she told them that on the day prior to the incident, she returned late from the office and on that count accused assaulted her. She also told them that due to harassment of the accused she got angry and got herself burnt. Alka succumbed to the burn injuries on 21-8-1988. In the meantime Police were informed about admission of Alka in burn condition and as such AD was registered and the Special Executive Magistrate had even recorded the statement of Alka. After the death of Alka on 23-8-1988 PW 3 Kusum i.e. mother of Alka filed complaint with Police. On the basis of the said complaint crime was registered at CR No.I 347/86 at Wagle Estate Police Station. The Police then visited the place of offence and drew panchanama and also attached some articles from the place of

offence. They recorded the statement of various witnesses and after completion of investigation submitted charge sheet against the accused for the offence punishable under Section 498A, 304B and 306 of IPC.

7. Finding that the accused was charge sheeted for the office exclusively triable by the Court of Sessions, the learned J.M.F.C., Thane committed the case to Sessions Court, Thane.

8. The learned 4th Additional Sessions Judge, Thane framed charge Exh.2 against the accused for the offence mentioned above, The charge was read over and explained to the accused. Accused pleaded not guilty and claimed to be tried. His defence was of total denial.

9. In order to bring home the guilt of the accused the prosecution examined as many as 10 witnesses consisting of :

i) Geeta Jogan Putra PW 1 Exh.10,
ii) Gayatri Vijay Kamat PW 2 Exh.11,
iii) Mother of deceased Alka Kusum R. Veer PW 3 Exh.12,
iv) brother of deceased - Rajendra R. Veer PW 4 Exh.15,

v) cousin brother of deceased - Bajrang Laxman Veer, PW 5, Exh.16

vi) Sister in law of deceased -Sangeeta Rajendra Veer PW 6, Exh.17

vii) Father of deceased - Ramchandra J. Veer, PW 7, Exh.18

viii) Balkrishna Arjun Jadhav, panch witness, PW 8, Exh.21,

ix) Sudhakar Pandharinath Landge, who took injured Alka to hospital PW 9, Exh.23, and

x) PSI Sambhaji Narayan Dhusharekar, PW 10, Exh.24.

The prosecution also produced complaint Exh.23, Post mortem notice Exh.25, panchanama of place of offence Exh.22, C.A. report (25).

10. After considering the evidence adduced by the prosecution the learned Sessions Judge came to the conclusion that there is sufficient evidence to show that deceased Alka was subjected to cruelty as contemplated under Section 498A of IPC. He however, held that the prosecution has failed to prove that Alka committed suicide and there is no sufficient evidence to show that it was a dowry death. He therefore, acquitted the accused of the offences punishable under Section 304B and 306 of IPC and convicted him only for the offence punishable under Section 498A of IPC and sentenced him as mentioned

above.

11. Being aggrieved by the above mentioned order the accused filed appeal against conviction while the State filed appeal against the acquittal of the accused of the offences punishable under Section 304B and 306 of IPC.

12. Shri Mandlik, learned Advocate for the accused has urged only two points. Firstly,he submitted that the learned Sessions Judge has not properly appreciated the evidence on record and has given undue importance to the evidence of witnesses i) Geeta Jogan Putra and ii) Gayatri Vijay Kamat. He also submitted that all the prosecution witnesses are interested witnesses and from their evidence at the most it can be said that there were some disputes and differences between Alka and accused but there is no sufficient evidence to hold that Alka was subjected to cruelty as contemplated under Section 498A of IPC. According to him the differences were on minor grounds. He, therefore, submitted that conviction under Section 498A of IPC is bad in law.

13. As against this, the learned APP submitted that having held the accused guilty for the offence punishable under Section 498A of IPC, the learned

Additional Sessions Judge ought to have held that accused is guilty of offences punishable under Sections 304B and 306 of IPC.

14. It is not in dispute that marriage of Alka was in fact initially settled with some other boy by name Prakash. However, the talks with regard to dowry did not materialise and as such the parents of Alka decided to search another match for Alka and then the marriage of Alka and accused was settled. It is also admitted that the said marriage took place on 9-5-1984 and out of the said wed lock the accused and deceased had two children. It is also an admitted fact that Alka sustained burn injuries on 20-8-1988 at about 11-30 a.m., when she was in the house situated at Padwal Nagar, Thane. At that time the husband of accused was also present in the house. It has come on record that the accused and one of the neighbour viz. Sudhakar P. Landge PW 9 took Alka to the hospital. Admittedly, the accused had also sustained burn injuries and for that he was also admitted in the hospital. From the perusal of the post mortem notes it is very clear that cause of death was "hypovolemic shock in a case of 68% superficial to deep burns".

15. The main and material question is whether the accused is responsible for the said death. It is

nobody's case that accused committed murder of Alka. However, as the death of Alka has occurred within 7 years from her marriage and as a result of the burn injuries it was argued on behalf of the prosecution that the case falls either under Section 304B of IPC or 306 of IPC as a result of the presumptions under the law.

16. Before finding out whether there is any substance in the argument advanced by the learned APP in this behalf, it is first necessary to see whether Alka was subjected to cruelty as contemplated under Section 498A of IPC. In order to prove this, the prosecution is mainly relying on the evidence of PW 1 Geeta Jogan Potra, PW 2 Gayatri V. Kamat, PW 3 Kusum Ramchandra Veer, PW 4 Rajendra Ramchandra Veer, PW 5 Bajrang Laxman Veer, PW 6 Sangita Rajendra Veer, PW 7 Ramchandra Jagannath Veer - father of deceased Alka. Firstly, it must be noted that admittedly, for the first two years of marriage the deceased Alka was in fact residing at her maternal home at Byculla while the accused was residing at Nagthane, District Satara. Both of them used to meet each other at week end and Alka gave birth to a female child on 23-10-1985. It is the case of the prosecution that since then accused started harassing her. It is true that the prosecution witness Geeta Potra Exh.10 as well as

Gayatri Kamat Exh.11, who were admittedly working along with deceased in Census office, Mulund have stated that at times Alka used to tell them about her domestic affairs and she had told them that her husband used to harass her on the ground that she gave birth to a female child. It has also come on record that since 1986 the accused started residing at Mumbai and then accused and deceased were living together in one rented accommodation. The above mentioned two colleagues of Alka have stated that whenever she used to return home late from the office, her husband i.e. accused used to scold her and he even used to say that she had affair with her Supervisor. They have also stated that Alka had told them that on that count accused had even assaulted her and Alka had even shown the marks of beating. Firstly, it must be noted that though these two witnesses were working with Alka, there was no reason for them to specifically go out of way and depose falsely against the accused. There are no serious omissions and contradictions in their testimony so as to discredit the version of these two witnesses. Both these witnesses have also stated that accused used to seek explanation of each paisa from Alka. We cannot ignore the fact that Alka was also an earning woman. She was serving at Mumbai, naturally,it was expected that husband would not ask account of each and every paisa. That was

bound to give some sort of feeling in the mind of Alka that her husband had no faith in her. The parents of Alka as well as PW 4 Rajendra PW 5 Bajrang and PW 6 Sangeeta have stated that Alka had told them that accused used to harass and ill-treat her and even assaulted her. Evidence of all three witnesses on this point is not shaken or shattered. Merely because Alka or parents had not lodged any complaint about the said ill-treatment we cannot jump to the conclusion that there was no ill-treatment.

17. The other witnesses viz. Rajendra R. Veer, Bajrang Laxman veer, Sangita Rajendra Veer and parents of Alka have also stated that Alka had told them that accused often used to pick up quarrel on flimsy grounds and used to taunt her and allege that she had affair with her supervisor. Making such baseless false allegation against wife amounts to cruelty. All these witnesses have also stated that accused often used to insist that parents of Alka should transfer the residential premises in which Alka and accused were residing. It is an admitted fact that the said accommodation is taken by the father of alka in the name of Alka’s brother but as at the relevant time he was serving at Nagpur and was not in need of said accommodation the same was provided to the accused and Alka but that does not

mean that the accused should have started laying a claim over the said accommodation. These witnesses have also stated that Alka told them that accused was not even ready to pay any consideration if at all the said accommodation is transferred in his name. So, when the accused had not claim over the said accommodation, it was totally improper on his part to insist for the said accommodation. Such repeated insistence also caused some mental torture and harassment to the deceased Alka.

18. We have carefully gone through the judgment of the learned trial Judge. From the perusal of the same it is very clear that he has rightly appreciated the evidence on record and has correctly held that there is evidence to show that Alka was subjected to cruelty at the hands of accused and has rightly held the accused guilty for the offence punishable under Section 498A of IPC. So, we are not inclined to interfere with the said finding.

19. The main and material question is whether there is sufficient evidence to hold the accused guilty for the offence punishable under Section 304B or 306 of IPC. For that purpose it would be worthwhile to see what are the relevant legal provisions. Sections 304B and 306 read as under:-

Sec.304B- Dowry death - (1) where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation - For the purposes of this sub-section "dowry" shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

. Section 113B of Indian Evidence Act says:-

113B - Presumption as to dowry death - When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with,any demand for dowry, the Court shall presume that such person had caused the

dowry death.

Explanation - For the purposes of this section, "dowry death" shall have the same meaning as in section 304B of the Indian Penal Code (45 of 1860).

Section 306 - Abatement of suicide - If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 113A : Presumption as to abatement of suicide by a married woman - When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or

by such relative of her husband.

Explanation - For the purposes of this section,"cruelty" shall have the same meaning as in section 498A of the Indian Penal Code (45 of 1860).

20. An attempt was made on behalf of the prosecution to show that this is a case of dowry death. The prosecution witnesses Kusum Ramchandra Veer, mother of deceased Exh.12, Rajendra Ramchandra Veer Exh.15 and cousin brother Bajrang Laxman Veer Exh.16 have stated that at the time of marriage between Alka and accused the accused had demanded dowry of Rs.20,000/- but actually ultimately the accused was paid dowry of Rs.13,000/-. Firstly, it must be noted that admittedly no any Yadi or writing was prepared when marriage was settled. PW 3 Kusum R.Veer, mother of deceased, PW 4 Rajendra R. Veer, brother of deceased and PW 5 Bajrang Laxman Veer, cousin brother of deceased have clearly admitted that they were not present at the time when marriage was settled. So, obviously there evidence is of no use to prove the alleged demand of dowry of Rs.20,000/-. Of course, the father of deceased Alka viz. Ramchandra J. Veer Exh.18 has stated that dowry of Rs.20,000/- was initially demanded but they actually paid amount of Rs.13,000/-. It is true

that there is no specific challenge to the evidence that amount of Rs.13,000/- was paid to the accused at the time of marriage. However, at the same time it must be noted that there is not even slightest evidence on record to show that after marriage the accused at any point of time asked the deceased Alka to bring money from her parents or that he had at any time expressed that parents of Alka have not given the dowry as agreed and that they have to pay balance amount of Rs.7,000/-. On the contrary, it has come on record that whatever amount was paid by them and expenses met by the father of Alka at the time of marriage were as per custom.

21. It is the prosecution case that accused was insisting that Alka's father should transfer the rented accommodation in his name and on that count used to harass her. Merely because the accused had expressed that rented accommodation in which accused and deceased were residing which was standing in the name of Alka's brother should be transferred in his name one cannot jump to the conclusion that such asking amounts to demand of dowry as contemplated under Section 304B of IPC. Besides this it must be noted that as per said provision Sec 304B the alleged ill-treatment or harassment must be soon before the incident and that too for or in connection with dowry. In the instant case, we find

that none of these witnesses have stated that after 1987 at any point of time the accused had insisted for the transfer of the said room or that he made any demand for dowry. Whatever the alleged instances of assault or beating or taunting are deposed by the colleagues and near relatives of Alka are of 1987 and certainly they have not narrated any specific instance which had occurred soon before the death of Alka. So, in our considered view the trial court has rightly held that this is not a case of dowry death.

22. It is prosecution case that on 20-8-1988 when Alka sustained burn injuries and her parents met her and made query, she told them that on the previous day she returned from office late and hence on that count the accused picked up quarrel and assaulted her. It is the say of these witnesses that at that very time Alka told them that as she got angry she poured kerosene on herself and got herself burnt. It must be noted that if really this would have been told by the deceased Alka to the above mentioned witnesses at that point of time then certainly they would not have failed to lodge criminal complaint about the same immediately but we find that they have not done so. On the contrary it is only after the time Alka died on 21-8-1988 complaint was lodged on 23-8-1988. So, there is delay in lodging FIR and

the said delay is not at all satisfactorily explained by the prosecution. Naturally, it creates some doubt about the story regarding the accused assaulting Alka on the day prior to the incident. Besides this, it must also be noted that Alka was highly qualified and she had studied upto B.A.LL.B., She was having government service. So, under such circumstances it is difficult to believe that if any such incident had occurred she would not inform about the same immediately to her parents and would go to the length of getting herself burnt and that too when she was admittedly having two minor children. So, considering this aspect and the testimonies of those witnesses and panchanama of place of offence, the learned trial Judge has held that it is even not proved by the prosecution that Alka committed suicide.

23. There is another very important circumstance which has weighed greatly with learned trial Judge. Admittedly, when Alka was admitted in the hospital, her statement was recorded by the Special Executive Magistrate. When such was the position it was absolutely essential for the prosecution to bring the said statement or dying declaration on record. However, we find that prosecution has not only suppressed the said dying declaration but has also not given any explanation about not producing the

said statement on record. It was duty of the prosecution to bring it on record and to show as to why the same cannot be relied upon. It is needless to say that in such type of cases when dying declaration is recorded by an independent person like Special Executive Magistrate that is very important evidence available with the prosecution. But the prosecution has failed to produce the same. Naturally, having regard to the provisions of Section 114(g) of Evidence Act one can say that adverse inference has to be drawn against the prosecution.

24. Section 114(g) says that :-

> (g) That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it.

25. So, considering the above mentioned aspect the learned trial Judge has come to the conclusion that prosecution has not proved beyond reasonable doubt that death of Alka was a dowry death. According to him, the evidence was also not sufficient to presume that Alka committed suicide as a result of ill-treatment or cruelty caused to her at the hands of accused. Findings recorded by the learned

Additional Sessions Judge for acquitting the accused of offences under Section 304B and 306 cannot be said to be perverse. So, when the view taken by the learned Additional Sessions Judge in that behalf is a possible view, we are not inclined to interfere with the said finding of acquittal.

26. It is true that having once come to the conclusion that accused is guilty of the offence punishable under Section 498A of IPC the learned Additional Sessions Judge, Thane should have given proportionate sentence. Sentence given to the accused that way appears to be some what inadequate and it seems that the learned Additional Sessions Judge has rather taken a very sympathetic view. However, having regard to the fact that case is of 16 years old, we are not inclined to interfere with the sentence passed by the learned Additional Sessions Judge, Thane.

27. Hence we pass the following order :-

i. Criminal Appeal No.200 of 1990 with Criminal Appeal No.352 of 1990 with Criminal Revision Application No.295 of 1990 stand dismissed.

ii. Accused to surrender within 4 weeks from today so as to undergo punishment imposed against him. If

accused fails to surrender accordingly, the trial Court to take necessary steps for arrest of the accused and send him to jail to undergo the sentence.

(D.G.DESHPADNE,J)

(S.R.SATHE,J)